IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

WP(C).No. 15101 of 2007(W)

PETITIONERS:

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1. V.A.K.THANGAL, AGED 46 YEARS,
S/O. CHERU KOYA THANGAL, VALIYAVEEDAKATH KUTTIYIL,
VANIYAMBALAM P.O., MALAPPURAM DISTRICT.

2. SRI.T.P.MOHAMMED, S/O. T.P.VEERAN,
THEKKUMPURATH HOUSE, EMANGAD,AMARAMBALAM
SOUTH P.O., MALAPPURAM DISTRICT.

BY ADV. SRI.K.RAMAKUMAR
SRI.K.ANAND

RESPONDENTS:

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1. THE BLOCK DEVELOPMENT OFFICER,
WANDOOR, MALAPPURAM.

2. SRI.K.V.RAJENDRAN,
MEMBER, WANDOOR GRAMA PANCHAYAT, MALAPPURAM.

3. SRI.M.ALAVI,
MEMBER, WANDOOR GRAMA PANCHAYAT, MALAPPURAM.

4. THE STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM.

5. THE WANDOOR GRAMA PANCHAYAT,
MALAPPURAM DISTRICT, REPRESENTED BY ITS SECRETARY.

R1 BY GOVERNMENT PLEADER (SHRI P.K. RAVISANKAR)

BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM

SRI.M.K.DAMODARAN (SR.)

SRI.GILBERT GEORGE CORREYA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 15101 OF 2007 W

Dated this the 24th May, 2007

JUDGMENT

Case of the petitioners, in brief, is as follows:

Petitioners were elected as the President and Vice President in the Wandoor Grama Panchayat in the year 2005. There are altogether twentytwo Members, eleven belonging to the United Democratic Front, while eleven belonged to the Left Democratic Front. Respondents 2 and 3 issued notice to first respondent to convene a meeting under Section 157 of the Kerala Panchayat Raj Act to discuss a No Confidence Motion against both the petitioners. Ext.P1 is produced as the Notice issued by the first respondent. Petitioners have raised three contentions. In the first place, they would contend that the Notice constitutes a contravention of Section 157 of the Kerala Panchayat Raj Act. It is contended that this is so, for the reason firstly that copy of the Notice was not circulated among the Members of the Panchayat including the petitioners. The

second complaint raised against the No Confidence Motion which was, in fact, carried by a majority on 8.5.2007 is that there is a composite Notice in respect of the No Confidence Motions moved against the petitioners who were occupying the position of President and Vice President. In other words, the second complaint is that the law contemplates that there should be two separate Notices in regard to the President and the Vice President. Thirdly, the case of the petitioners is that the law as contained in Section 157 of the Kerala Panchayat Raj Act is contravened for the reason that there is only one notice issued for convening two meetings. Finally, it is also contended by the petitioners that one of the persons who voted in the No Confidence Motion was a defector, who had no eligibility to exercise his franchise in the matter of the No Confidence Motion.

2. The Election Commission has filed a Statement, inter alia, taking the following stand:

Petitioners cannot challenge Ext.P1 for the reason that they

have participated in the deliberations. It is their case that there is no prohibition against issuing a composite notice in respect of the President and the Vice President. It is their further case that for a valid notice, the notice for convening the meeting shall state the date, the time and place of the meeting, which have been indicated in Ext.P1. It is pointed out that on receipt of the separate notice of intention to move the No Confidence Motion against the petitioners signed by the requisite number of persons, the Authorised Officer issued Ext.P1 convening separate meetings to consider the motion of no confidence against the petitioners. Of course, learned counsel for the Election Commission would contend that the No Confidence Motion having been carried by a majority, this Court may not interfere, as it would tantamount to putting the petitioners back in power, when the Members have ceased to have confidence in them and, therefore, passed the No Confidence Motion, whatever be the niceties of the contentions of the petitioners.

3. Shri P.K. Vijaya Mohan, learned counsel appearing on

behalf of respondents 2 and 3 also supports the impugned order by contending that the law has not been violated in the matter of issuance of Ext.P1 notice. He would also contend that the petitioners are estopped from challenging Ext.P1 after participating in the meeting.

4. Taking up the first contention, namely that there is a violation of Section 157, it is contended by Shri K. Ramakumar, learned counsel appearing for the petitioners, that when a No Confidence Motion is moved, it is highly necessary that the Members are provided with the copy of the Notice and the motion. According to him, without the Members being told the agenda, effective participation in the meeting would become impossible. Having regard to the drastic repercussions that follow, the passing of the No Confidence Motion, it is contended that the Members are entitled to know the contents of the Notice of the No Confidence Motion. In particular, he would contend that when sub-section (2) of Section 157 mandates that a particular number of Members constitute the

requisite minimum for bringing a No Confidence Motion, it is imperative that the Members against whom the Motion is moved, get an opportunity to peruse the Notice and Motion, to ascertain who are the persons who have signed as Members and whether the provision of Section 157(2) stands satisfied. There could be forgery, he contends. Petitioners would stand deprived of the opportunity to raise preliminary objections, in other words, regarding the validity of the notice by not furnishing a copy of the notice and the motion, he contends. Referring to a decision of a learned Single Judge of this Court in Jose Augustine and Another v. State of Kerala and Others (AIR 1999 KER. 293), wherein this Court has taken the view that service of notice of the motion is unnecessary, learned counsel for the petitioners would contend that the said decision does not represent the correct position in law. He would contend that the learned Single Judge propounded the said view without having had the advantage of appreciating the provisions contained in the Kerala Panchayat Raj (Procedure for Panchayat Meeting)

Rules, 1995 (hereinafter called the Rules). He would contend that when the Members consider a No Confidence Motion under Section 157 of the Kerala Panchayat Raj Act, they, none-the-less do it in a meeting. In this context, he would refer to the provisions of Sub-Sections (3), (4), (5), (6) and (7) of Section 157 where there is specific reference to the word "Meeting". Therefore, he would contend that the No Confidence Motion under Section 157 is considered at a meeting. If that be so, he contends, the Rules aforesaid squarely apply. In expatiating this argument, he would invite my attention to Rules 4, 5 and 6 in particular of the said Rules apart from Rule 15. Rule 4 sub-rule (1) of the Rules reads as follows:

> *" **4. Notice and agenda of meeting.-** (1) The notice regarding the place, date and time of the meeting and subject to be discussed in the meeting shall be given to the members at least three clear days prior to the date fixed for beginning of the meeting:*

> *Provided that, in the above said clear days, declared holidays shall be included but the date of receipt of notice and the date of meeting shall not be included."*

Sub-rule (4) of Rule 4 of the Rules reads as follows:

> *"(4) Copies of notice and agenda issued under sub-rules (1) and (2) shall be published in the notice board of the Panchayat on the date of notice itself."*

Rule 5 mandates that the Secretary shall prepare the agenda for the meeting in consultation with the President. Sub-rule (2) provides that the agenda shall include the subject which, according to the Secretary, requires consideration of the Panchayat and that proposed by the President. Rule 15 is very significant and it is extracted hereunder:

> *"**15. Motion of no-confidence in the President or the Vice-President -** (1) A motion*

expressing no-confidence in the President or the Vice-President of a Panchayat shall be made in accordance with the procedure laid down in Section 157 of the Act.

(2) A notice under sub-section (2) of Section 157 shall be in the form appended to these rules."

He would, therefore, contend that being a meeting, even the consideration of a No Confidence Motion, must be preceded by the preparation of an agenda. The agenda must be published in the Notice Board of the Panchayat in which case it is pointed out that the petitioners could have obtained copies of the notice and the motion from the Panchayat and thereby ascertain as to who has moved the notice and the motion and whether there is compliance with Section 157(2) of the Act. He likewise places reliance on Rule 4(1) of the Rules which I have already referred to, to contend that the subject to be discussed at the meeting should be given to the Members at least three clear days, to

contend that the notice and the motion of No Confidence Motion should be provided to the Members so that an effective debate as contemplated takes place. A learned Single Judge of this Court in Jose Augustine and another v. State of Kerala and Others (AIR 1999 Ker. 293) has taken the following view:

> *"The question of giving copies of notices are not contemplated. An advance clear seven days notice had been given and that motion is going to be discussed in the meeting where the petitioners would have full opportunity to meet the motion. Therefore, there is no substance in the contention that there is violation of principles of natural justice. Provisions of Section 157 of the Act is valid."*

5. Learned standing counsel for the Election Commission also relies on a decision of this Court in Valsalam v. State of Kerala (2003 (1) KLT 858) and also another decision in Kunhimon v. Block Development Officer (2003 (3) KLT 664). In Valsalam v. State of Kerala (2003 (1) KLT 858), a learned

Single Judge of this Court took the view that the Government has no authority to invoke Section 191 of the Panchayat Raj Act in regard to the result of a No Confidence Motion. The Court held as follows:

> *"Thus a separate procedure is contemplated under law for moving a no confidence motion and in fact it has been made a function of the Election Commission to deal with a motion for no confidence. The holding of a meeting to consider a no confidence motion is not a function of the Panchayat and it need not be presided over by the President of the Panchayat. The meeting for discussing a no confidence motion is convened by the representative of the Election Commission. Notice to move a no confidence motion has to be given to the authorised representative of the Election Commission and he will convene the meeting of the elected members and preside over the meeting and the result of voting also will be announced by him. A decision or a resolution can be taken only in a meeting of the Panchayat. A meeting of the elected members convened by the representative of the Election Commission is not a*

> *meeting of the Panchayat. Every meeting of the Panchayat has to be presided over by the President or Vice President or any other member. A meeting of the elected members convened by the representative of the Election Commission is not a meeting of the Panchayat."*

In Kunhimon v. Block Development Officer (2003 (3) KLT 664), a learned Single Judge of this Court took the following view:

> *"12. The learned counsel representing the respondents also referred to decisions reported in 2003 (1) KLT 858 (Valsalam v. State of Kerala) and 2002 (3) KLT 57 (Kuttappan v. State of Kerala). This was for canvassing the position that the rules referred to by the petitioners had no relevance. This Court had held that rules relied on do not apply to a no confidence motion and the entire situation is governed only by S.157 which was a complete code by itself. Justice Babu had in clear terms indicated that a no confidence motion cannot be considered as one coming within the purview of*

> *a resolution, since it is not a meeting of the Panchayat, but proceedings presided by an Officer. This did not come within the normal business of a Panchayat.*
>
> *13. A general reading of the rules lend support to the above observations. In the matter of notice, conduct and quorum, and the general procedure spoken to by the Rules, they are distinct and different from the modalities prescribed by S.157 of the Act. Only the form of the no confidence motion is to be in the prescribed form of the Rules. It is also meaningful to note that in respect of such proceedings what is tabled is not a resolution, but a motion. We have therefore to draw sustenance from S. 157 of the Act alone when a dispute arises about the procedures of a no confidence motion."*

Thus, the case of the respondent is that the Rules mentioned supra will not apply to a meeting in which a No Confidence Motion is considered.

6. I am of the view that there is little merit in the

contention of the petitioners that the Meeting Rules as such applied, thereby giving rise to a legal liability on the part of the authority convening the meeting to serve copies of the notice of the motion on the Members. Section 157 of the Act, in my view, is a complete code in itself. Rule 15 of the Rules, in fact, would unambiguously nail the issue against the petitioners in this regard. No doubt, the form of the notice required to be given is part of the Rules. Sub-section (2) of Section 157 of the Act provides that notice is to be given as prescribed. By sub-rule (2) of Rule 15 of the Rules, the rule making authority in purported obeisance to the need for a rule, provides the form, as the form appended to the said Rule. What is clinching in this regard is that the fact that Section 157(1) of the Act specifically provides that the procedure for moving a no confidence motion shall be as provided therein. This, in conjunction with sub-rule (1) of Rule 15 of the Rules would make it unmistakably clear that the law giver has contemplated that Section 157 contains both the power and also the procedure for the moving of a no

confidence motion. In other words, it is clear that Section 157 provides the complete procedure for the holding of the meeting. Unlike in an ordinary meeting, the meeting in respect of a no confidence motion is presided over by the Officer authorised by the Election Commission. The quorum is provided in Section 157 itself. Sub-section (3) of Section 157 provides that notice convening a meeting in which a no confidence motion to be discussed is to be seven days, unlike a meeting under the Rules where the notice period is three days. It is also to be noticed that a no confidence motion usually does not contain any reference to the allegations as such. A no confidence motion is usually worded as "We, the Members of the Panchayat express no confidence either in the President or the Vice President." In fact, in this case also, there is no case for the petitioners that the notice of the motion contained any allegations as such. At least, there is no case that they made a demand at the time when the meeting started to have the portion read out to see whether sub-section (2) of Section 157 was complied with and such request

was turned down. Even going by the Rules, what the Rules actually mandate is that the meeting should be convened usually to discuss matters included in the agenda. Apparently, the whole idea of having an agenda is that the Members are foretold about the matters about which they have to exercise their minds and take a decision. In this regard, it is to be noticed that Section 157 (4) mandates that the Officer has to send by registered post to the elected Members a notice not less than seven clear days of the meeting. Under the provision, the time must also be stated. Notice must be affixed in the Notice Board of the Panchayat. That apart, sub-section (7) provides that as soon as the meeting commences, the Presiding Officer must read at the meeting the motion for the consideration of which it has been convened and further declare it to be open for debate. Thus, the Members must be served with the notice which should not less than seven days, intimating the convening of the meeting for the purpose of discussing the No Confidence Motion and the debate is preceded by reading out the motion. If

I am to proceed with on the basis that the motion contained only a single sentence as aforesaid, I am of the view that absolutely no prejudice is caused to the petitioners by not serving the said resolution before the motion. After all, as held by the learned Single Judge in Jose Augustine and Another v. State of Kerala and Others (AIR 1999 Ker. 293), the law provides for a debate spanning over three hours. Apparently, No Confidence Motion is devised for Members to oust from power persons in whom they have lost the confidence. At the end of the day, as in most democratic exercises, the proceeding boils down to a matter of numbers. This is apparently inevitable and is a legislative choice, neither the wisdom of which nor the validity of which I am called upon to decide. I proceed on the basis that the Section is valid as there is no challenge to the same. If that be so, whatever be the inadequacy in not furnishing the copy of the resolution, it would appear to be diminished and if not eliminated by the process of reading out the motion and then fixing a period of three hours for debate and then throwing it

open to voting. At any rate, I would think that Section 157 of the Act being a code itself, particularly having regard to Rule 15 of the Rules which unambiguously indicates that the procedure at the meeting is as contained in Section 157 of the Act, it is not open to the petitioners to insist upon service of the copy of the notice of motion on the Members. Apparently, the petitioners were elected on the strength of the majority and they now stand removed again on the strength of a majority. The law provides for such removal and as long as the law is not challenged, it is not open to the petitioners to make a complaint against non-service of the notice of motion.

7. Coming to the second contention raised on behalf of the petitioners that there is only a composite notice in regard to the No Confidence Motion moved against the President and the Vice President, I am of the view again that the petitioners have not made out again a case. There has to be a valid notice in compliance with sub-section (2). A Notice under sub-section(4) should indicate the time of the meeting. There is no case that in

this case the notice did not contain the time of the meeting. Apparently, two meetings were held, one in regard to the first petitioner and the other in regard to the second petitioner. I say this because a case could have been built on the basis of the provisions of sub-section (9) of Section 157 of the Act which read as follows:

> *"(9). A debate on any no-confidence motion shall automatically terminate on the expiry of three hours from the time appointed for the commencement of the meeting if it is not concluded earlier and upon the conclusion of the debate or upon the expiry of such period of three hours as the case may be, the motion shall be put to vote."*

The said provision contemplates that the debate could last for three hours. Each No Confidence Motion must, before it is open for voting, be preceded by time for debate for a period of three hours. In this case, apparently three hours was available for debate separately in respect of petitioners 1 and 2. Thus,

though the meetings were convened on the same day, they were convened and held in two different sessions. The law, I would think, would not prohibit issuance of a notice which is composite or in other wards, notice which relates both the President and the Vice President as long as it does not fall short of the requirements of Sub-section (2) in terms of the number required. Petitioners have not made out a case that the number of persons who have signed the notice is less than what is provided in Sub-section (2). Of course, it is part of their contention that one of the persons who voted had committed defection about which I shall deal with later on. The fact that there was a notice in relation to two motions expressing No Confidence Motion in the petitioners, is no ground to declare the No Confidence Motion as the notice is not otherwise bad. The question is whether even the composite notice satisfies the mandate of Sub-section (2). In so far as the petitioners have not made out a case that Sub-section (2) stands violated otherwise, the fact that it is a composite notice which related to the two

different motions would not make the proceeding vulnerable.

8. The third argument of the petitioners is meritless and it is involved in the finding which I have already entered. The contention that there should have been two different meetings can only fall to the ground as, in fact, though on the same day, two separate meetings were held in two different sessions, each scheduled to last for three hours.

9. I am also not impressed by the contention of the petitioners that in the No Confidence Motion discussion in the morning of 8.5.2007 one Shri Valslaraj who was elected as an independent candidate with the support of thd UDF violated the Whip and voted in favour of the No Confidence Motion contrary to the specific ship issued to him and, therefore, the No Confidence Motion is to fail. In this regard, it is the case of the Election Commission and respondents 2 & 3 also that there was no automatic disqualification incurred by voting against the whip. It is their case that it is only upon a declaration granted by the Commission under the Kerala Local Authorities (Prohibition

of Defection) Act, 1999 that the person would cease to be a Member and, therefore, cease to have a right to vote. It is their case that it is only from the date of the said declaration that disqualification was incurred. In other words, what they would say is that in this case No Confidence Motion was carried on 8.5.2007 on which day the concerned Member was not disqualified by any order of the Commission in accordance with law. Therefore, he had every right to cast his vote and, therefore, the passing of the No Confidence Motion was perfectly valid.

9. In fact the Commission points out that the issue is also not res integra, as the learned Single Judge has held in Jose Augustine and Another v. State of Kerala and Others (AIR 1999 Ker. 293) as follows:

> *"17. Under the Kerala Local Authorities (Prohibition of Defection) Ordinance, 1998, there is no automatic disqualification of a member. Before a member is disqualified certain conditions have to be satisfied and it is subject to the decision and adjudication by the Election Commission.*

> *Therefore, the allegation of shifting of loyalty and defection and consequent attraction of anti defection Ordinance are matters that are to be adjudicated and there cannot be automatic disqualification."*

If that be the position, I would think that no infirmity can be attached to the proceedings by virtue of the voting done by the said Member. Having regard to the totality of the facts, I feel that the petitioners have not made out a case for interference, nor have the petitioners made out a case for reconsideration of the decision of the learned Single Judge in Jose Augustine and another v. State of Kerala and Others (AIR 1999 Ker. 293). The Writ Petition is dismissed.

K. M. JOSEPH, JUDGE

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